

REMARKS

Claims 1-27 are pending.

Claims 1-3, 5, and 17 stand rejected under 35 USC §103(a) as being allegedly unpatentable over Fijoleck et al. (US 6,510,162) in view of Hyziak et al. (US 5,682,460).

Claims 4, 6-16, and 18-27 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

Changes in the claims:

Claims 1, 2, and 17 have been amended in this application to further particularly point out and distinctly claim subject matter regarded as the invention. No new matter has been added.

Rejection under 35 USC §103(a) – claims 1-3, 5, and 17

Claims 1-3, 5, and 17 stand rejected under 35 USC §103(a) as being allegedly unpatentable over Fijoleck et al. (US 6,510,162) in view of Hyziak et al. (US 5,682,460). This rejection is respectfully traversed.

Under MPEP §706.02(j), in order to establish a prima facie case of obviousness required for a §103 rejection, three basic criteria must be met: (1) there must be some suggestion or motivation either in the references or knowledge generally available to modify the reference or combine reference teachings (MPEP §2143.01), (2) a reasonable expectation of success (MPEP §2143.02), and (3) the prior art must teach or suggest all the claim limitations (MPEP §2143.03). See In re Royka, 490 F. 2d 981, 180 USPQ 580 (CCPA 1974).

The Examiner stated that column 19, lines 38 to 46, and column 8, lines 1 to 7, of Fijolek (U.S. Patent No. 6,510,162), disclose a cable modem system having the capability of monitoring data channel traffic usage wherein the cable modem supports transmission and reception of IP datagrams, and therefore clearly anticipate monitoring traffic information relating to datagrams as recited in claim 1 of the present invention.

However, according to column 19, lines 38 to 46, of Fijolek, one data channel is used by a plurality of cable modems. Hence, even if the capability is provided to monitor the total usage of the data channel, the usage of that data channel by each cable modem cannot be monitored.

In contrast, the present invention monitors traffic information relating to datagrams that have been transmitted by **individual users** to a network or the datagrams that have been received from said network by **individual users**, and so the subjects that are monitored are completely different for the present invention and Fijolek. Even if Fijolek disclosed the point of monitoring data channel usage, monitoring traffic information relating to datagrams transmitted by **individual users** to a network or the datagrams that have been received from said network by **individual users** as in the present invention would not be obvious.

In addition, the Examiner points out that the grounds for our previous argument is allegedly based only on the disclosure in the embodiments of the specification (page 12, line 15) and not on the recitation of the claims. However, as stated above, data channel monitoring as disclosed in Fijolek differs completely from monitoring of traffic information relating to datagrams transmitted by **individual users** as claimed in the present invention.

Thus, Applicant submits that claims 1-3, 5, and 17 recite novel subject matter which distinguishes over any possible combination of Fijolek and Hyziak.

Conclusion


For all of the above reasons, applicants submit that the amended claims are now in proper form, and that the amended claims all define patentable subject matter over the prior art. Therefore, Applicants submit that this application is now in condition for allowance.

Request for allowance

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited. If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Respectfully submitted,
THELEN REID & PRIEST LLP

Dated: June 16, 2004



Thierry K. Lo
Reg. No. 49,097

Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640
(408) 282-1810 Direct
(408) 292-5800 Main
(408) 278-8210 Fax